

Attorney Docket No.
032161WZ061

TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 78/211,023
Published October 21, 2003

Carpenter Co.

Opposer,

v.

Z&M Enterprises, LLC

Applicant.

12-22-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #78

Opposition No. _____

Commissioner for Trademarks
Box TTAB FEE
2900 Crystal Drive
Arlington, Virginia 22202-3513

Madam:

NOTICE OF OPPOSITION

In the matter of the application of Z&M Enterprises LLC, for registration of the mark ISO-PEDIC, filed on February 5, 2003, application Serial No. 78/211,023, published in the Official Gazette in Vol. 1275, No. 3, page TM 311 on October 21, 2003. Carpenter Co., believes that it will be damaged by registration of the mark shown in Serial No. 78/211,023, and hereby opposes registration.

The grounds for opposition are as follows.

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1. Opposer is a Corporation of the State of Virginia, with its principal place of business at 5016 Monument Avenue, Richmond, Virginia 23261.

2. Opposer is now and has been engaged in the bedding business as well as in businesses related to bedding. Opposer has used and is using the mark ISOTONIC in association with, "mattresses; pillows and mattress pads."

3. Opposer owns Registration No. 2288411 for the mark ISOTONIC, registered on October 26, 1999 for "pillows and mattress pads" and Registration No. 2490430 for the mark ISOTONIC, registered on September 18, 2001 for "mattresses." The aforesaid registrations are valid and subsisting, unrevoked and uncanceled and Carpenter Co. is the owner of the aforesaid registrations and all of the goodwill represented thereby.

4. Prior to the filing of the application herein opposed, Carpenter Co. has used the designation ISOTONIC as a trademark in connection with the bedding industry.

5. The use of Opposer's marks have been valid and continuous and have not been abandoned. Opposer's marks are symbolic of extensive good will and consumer recognition built up by Opposer through substantial amounts of time and effort in advertising and promotion.

6. Notwithstanding Opposer's rights in and to its ISOTONIC marks, Applicant on February 5, 2003, filed an application for registration of the mark ISO-PEDIC for "bedding, namely, mattresses, mattress toppers, pillows and cushions." That application was given Serial No. 78/211,023 and was published for opposition in the Official Gazette of October 21, 2003, page TM 311.

7. Applicant's mark ISO-PEDIC, when used in connection with the goods set forth in its application, is confusingly similar to Opposer's use of its ISOTONIC marks, as set forth and protected by Opposer's above-identified registrations. Registration of Applicant's mark and

continued use by it for its products is likely to cause confusion, mistake and deception. The marks are highly similar in appearance, sound, and meaning, and the goods are nearly identical so that there would be a likelihood of such confusion, mistake and deception.

8. Despite Opposer's rights in and to the ISOTONIC marks, Applicant has been using the ISO-PEDIC designation to refer to its products. For example, both goods are used in association with mattresses, pillows and mattress pads or "toppers." The nearly identical nature of the goods accentuates the similarity between ISOTONIC and ISO-PEDIC and exacerbates the likelihood of confusion regarding the marks and the likelihood of confusion as to sponsorship or affiliation.

9. If Applicant is permitted to use and register its mark, ISO-PEDIC, for the goods specified in the application, confusion in the trade resulting in damage and injury to Opposer would be caused and would result by reason of the similarity between Applicant's mark and Opposer's marks. Persons familiar with Opposer's marks would be likely to confuse Applicant's goods as a product made, sold, or sponsored by Opposer. Any such confusion in the trade would inevitably result in loss of sales to Opposer.

10. In addition to the harm identified in paragraph 9, any defect, objection or fault found with Applicant's products marketed under the ISO-PEDIC mark would necessarily reflect badly upon and significantly injure the reputation which Opposer has established for its products.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's mark, and prays that registration be denied.

A duplicate copy of this Notice of Opposition is enclosed. Also enclosed is our check for \$300.00. Please charge our Deposit Account No. 02-4300 for any additional fees which may be required.

DATED this 22nd day of December, 2003.

Respectfully submitted,

SMITH, GAMBRELL & RUSSELL, LLP



Dennis C. Rodgers

Scott D. Woldow

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Commissioner of Trademarks
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Madam:

Transmitted herewith is


ITEMS	FEE
Notice of Opposition (in duplicate)	\$300.00

- [x] Our check in the amount of **\$300.00** is attached hereto.
[x] Please charge our Deposit Account No. 02-4300 for any additional fees that may be required, or credit our account for any overpayment.

Respectfully Submitted,

Smith, Gambrell & Russell, L.L.P.

By:



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December 22, 2003